

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHRIS O'CONNOR,)	Case No.: 5:16-CV-0751 (MAD/TWD)
)	
Plaintiff,)	
)	
v.)	
)	COMPLAINT
CAPITAL ONE BANK (USA) N.A.,)	
)	
Defendant)	

CIVIL COMPLAINT AND JURY TRIAL DEMAND

Plaintiff, Chris O'Connor, (hereinafter "Plaintiff"), by and through his undersigned attorney, alleges against Capital One Bank (USA), N.A. (hereinafter "Defendant") as follows:

PRELIMINARY STATEMENT

1. This is an action for damages arising from Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* ("TCPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3).

3. Venue is proper in this district under 28 U.S.C § 1391(b).

PARTIES

4. Plaintiff, Chris O'Connor, is a natural person, who at all relevant times has resided in the City of Auburn, Cayuga County, State of New York.

5. Defendant, Capital One Bank is incorporated and doing business in the State of Virginia, with its corporate mailing address as 1680 Capital One Drive, McLean, VA 22102-3491.

FACTUAL STATEMENT

6. On or about April 20, 2016, Plaintiff began receiving automated telephone calls from Defendant on Plaintiff's cellular telephone number.

7. Plaintiff has never had an account with Defendant and accordingly never provided consent to receive telephone calls from Defendant.

8. When Plaintiff would answer phone calls from Defendant, Plaintiff would be connected to an automated system giving Plaintiff options to update his account information.

9. As Plaintiff continued to receive frequent telephone calls from Defendant, Plaintiff spoke with a representative of Defendant on May 23, 2016.

10. Plaintiff provided his social security number and Defendant's representative confirmed that Defendant had no account for our client.

11. All calls to Plaintiff cellular telephone number 315-xxx-0779 were from Defendant's phone number (800) 955-6600.

12. After the first initial telephone call from Defendant on April 20, 2016, Plaintiff received twenty-six additional automated telephone calls to his cellular telephone number from Defendant.

13. Defendant's telephone calls to Plaintiff were placed through use of an automated telephone dialing system.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227 et seq.

14. Plaintiff repeats and realleges the prior paragraphs as if fully set forth herein.

15. Defendant called Plaintiff's cellular telephone number through use of an automatic telephone dialing system without Plaintiff's consent twenty-six times in violation of the TCPA.

16. Plaintiff has been damaged by Defendant's actions which constitute violations of 47 U.S.C. § 227(b)(1)(A)(iii), as well as any other applicable provisions of the TCPA, and its conduct is not exempt from the proscriptions of the statute.

WHEREFORE, Plaintiff, Chris O'Connor, respectfully requests judgment as follows:

- a. Enter an Order declaring Defendant's actions, as described above, in violation of the TCPA;
- b. Enter judgment against Defendant for all violations of 47 U.S.C. § 227b(1)(A)(iii)
- c. Enter judgment against Defendant for statutory damages for each violation of 47 U.S.C. § 227b(1)(A)(iii) or treble damages for each violation of the statute the Court deems willful; and
- d. Grant such other and further relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated this 24th day of June, 2016:

Respectfully Submitted,

s/ Matthew T. Sheffield
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